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SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. LAMPTEY (Ghana)

later: Mr. CHATURVEDI (India)
(Vice-Chairman)

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The meeting was called to order at 10.35 a.m.

ORGANIZATION OF WORK

1. The CHAIRMAN said that in view of the fact that no delegation had taken the floor at the current session on the question of the observer status of national liberation movements, he would submit a draft decision requesting the General Assembly to defer consideration of that item for three years. A draft resolution calling on the General Assembly to adopt the draft declaration on international terrorism that had now been finalized should ideally be adopted by consensus. However, any attempt by one or two delegations to delay the adoption of such a resolution should not be allowed to prevent the General Assembly from adopting the declaration at the current session.

2. Turning to the report of the International Law Commission, he said that a general draft resolution concerning the ongoing work of the Commission, and also specific draft resolutions on the questions of international watercourses and the draft statute for an international criminal court, would be submitted under his name. It was clearly the view of the Committee that the Commission had completed its work on watercourses, and that the General Assembly could use that work as a basis for elaborating a convention on the question. The draft resolution to be presented to the Sixth Committee would indicate that elaboration of a convention on watercourses should be the major creative task facing it at its next session.

3. The debates in the Committee had also made it clear that much work remained to be done on the topic of a draft code of crimes. Some had hoped that the code could be completed in time to be tied in with the statute for an international criminal court; but the majority view had been that that would not be possible. The Committee would thus submit a resolution urging the International Law Commission to expedite its work on the draft code.

4. The major topic facing the Committee in the context of the International Law Commission was the draft statute for an international criminal court, and he wished to make some proposals in that regard. The Commission had submitted a complete draft statute to the General Assembly at its request. Two courses of action were now possible: either the General Assembly, through the Sixth Committee, could elaborate a statute and turn it into a convention for adoption; or it could propose a conference of plenipotentiaries to elaborate and adopt a convention. Most countries clearly felt that a conference of plenipotentiaries was the most appropriate forum for such a task. He believed that to be the correct view, given that the elaboration of a statute would involve the highest legal authorities of the various member States.

5. Once a decision had been taken in that regard, it must be decided how and when such a task could be accomplished. An insignificant minority in the Committee had felt that action could be deferred for some considerable time; while a larger group had felt that a convention should be elaborated as soon as possible. Wisdom suggested, however, that some intersessional work would be

necessary: not in order to elaborate or amend the statute, but so as to take policy decisions regarding financial, administrative and similar matters - decisions which were not part of the Commission's mandate. At the next session, when States had had time to study the draft, some mechanism allowing for consultations and discussions on those policy issues could be put in place, having regard to the possible financial implications. In due course, the discussions of the intersessional group, the report of the Commission, the statutes and the commentaries thereto, and the summary of the debates of the Sixth Committee would be transmitted to States as the documentation which a conference of plenipotentiaries could use as the basis for work.

6. Many delegations had suggested that 1996 would be the most appropriate time for convening such a conference. The delegation of Italy had already offered to host the conference, and would need a time-frame within which to make its preparations. Given that the results of the conference would subsequently have to be submitted to the General Assembly in a report to its fifty-first session, it was his view as Chairman that the spring of 1996 would be good time to convene a conference of plenipotentiaries. Bearing in mind that in recent months the Security Council had already set up two international tribunals to deal with crimes of the type that would eventually come before the international criminal court, the Committee needed to recommend a scheme of the kind he was proposing, if the General Assembly was to take action and the world to have a statute for an international criminal court by the year 1996.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/49/10 and A/49/355)

7. Mrs. FLORES (Uruguay) said that chapter III of the report of the International Law Commission (A/49/10) had a twofold interest for her delegation. First, it dealt with a topic that concerned the international community as whole, inasmuch as it was connected with the use of a resource which was fundamental to life on the planet, and which called for the urgent development of rules to regulate its equitable and reasonable utilization. Protection of ecosystems and conservation of the environment were issues that could no longer be deferred. Secondly, it was of special significance to her country, given that Uruguay's frontiers consisted largely of international watercourses; that 75 per cent of its territory formed part of the Plata river basin; and that it had recently joined forces with Argentina, Brazil, Bolivia and Paraguay to cooperate on a navigation and transport development project of benefit to the Southern Cone as a whole, the Hidrovía Project.

8. With regard to the action to be taken on the draft articles on the law of the non-navigational uses of international watercourses, her delegation had always favoured the drafting of a convention, and it thus supported the Commission's recommendation referred to in paragraph 219.

9. The draft articles should incorporate concepts that had been formulated and developed in recent international instruments such as the 1992 Rio Declaration on Environment and Development, which contained a group of articles dealing with the concept of sustainable development. Chapter 18 of Agenda 21, for instance,

dealt with protection of the quality and supply of freshwater resources and application of integrated approaches to the development, management and use of water resources.

10. Article 2 (b) defined a watercourse as a system of surface waters and groundwaters constituting a unitary whole and flowing into a common terminus. Confined groundwater would thus be excluded from the draft articles. While that approach was understandable, confined groundwater should be included, to the extent that its utilization had repercussions on the system. The alternative, proposed in the draft resolution on confined transboundary groundwater, was not an ideal approach to the question.

11. With regard to article 3, paragraph 3, on consultations with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements, her delegation considered that the negotiating process itself should be obligatory. That view was borne out by paragraphs (18) and (20) of the commentary to article 3, discussing the decision in the Lake Lanoux case.

12. Article 4, paragraph 1, adequately reflected comments made by her delegation on previous occasions. However, there should also be an obligation for watercourse States participating in consultations, negotiations or the drafting of a watercourse agreement to notify other watercourse States as soon as possible if the watercourse might be affected to a significant extent by an existing or proposed use.

13. The draft articles should also envisage environmental impact studies as a means of anticipating foreseeable consequences for the watercourse and the ecosystem as a whole.

14. Turning to part II, she said that article 5, paragraph 1, should further refine the concept of optimal utilization and benefits, explicitly introducing the principle of sustainability.

15. She proposed including in article 6, paragraph 1, a subparagraph referring to a balance between the benefits and harm that a new use or a change in an existing use might bring for the watercourse States. In article 6 (1) (g), the expression "of corresponding value" might be clarified, or replaced by the idea of other viable alternatives having a comparable cost-effectiveness ratio. Article 6, paragraph 2, should include an obligation to negotiate having regard to the factors set forth in paragraph 1 of that article, with a view to establishing what was equitable and reasonable in a given case. Furthermore, the phrase "when the need arises", might be deleted from paragraph 2, since it was desirable that consultations should take place in every case. Otherwise, a State might consider that its utilization of the watercourse was equitable and reasonable and might then cause significant harm to other watercourse States.

16. With regard to the changes made to article 7 on second reading, her delegation considered that the current formulation adopted a more permissive attitude towards an increasingly scarce and important resource, leading to the assertion in paragraph (2) of the commentary that the fact that an activity

involved significant harm would not of itself necessarily constitute a basis for barring it. In other words, the obligation it established referred to the means, not the end - an approach with which her delegation disagreed. In its view, equitable and reasonable utilization of an international watercourse by definition ruled out significant harm to another watercourse State.

17. A watercourse State could cause various degrees of harm to another watercourse State. Lesser harm was generally tolerated by States without the need for compensation in accordance with the principle of good-neighbourliness. Another category was significant or substantial harm, which was unacceptable in the absence of the consent of the affected State or suitable compensation. Yet another category was devastating harm, which was generally intolerable.

18. If the harm caused was in the second or third category, that would give rise to liability, since the rights of the other watercourse State had been violated. The obligation of due diligence was incumbent on States at all times, since it was related to the principle that the State had exclusive sovereignty over its territory. If a State did not act with due diligence, it automatically incurred liability.

19. With regard to the setting of limits on due diligence, her delegation believed that prior to the implementation of measures which could be harmful to an international watercourse, an environmental impact study should be carried out and an agreement negotiated with other States likely to be affected. Draft article 7 should be reworded to include that obligation.

20. Whenever a State which used an international watercourse knew in advance that such use might cause significant harm, it should be required to suspend the harmful activity, pay compensation and negotiate with the affected State or States with a view to adopting the measures required to enable the activity to continue without causing harm.

21. Draft article 8 should mention the principles of good faith and good-neighbourliness.

22. In article 10, paragraph 2, it might be useful to include a reference to the requisite procedures for arriving at a settlement of the conflict, and to provide for the obligation to negotiate.

23. Turning to part III, her delegation believed that it should provide for an obligation to carry out studies of the possible effects of planned measures upon the current or future uses of an international watercourse and to transmit the results of such studies to other watercourse States.

24. Referring to draft article 12, she said that the State which implemented the planned measures should not have sole discretion in determining whether they might have a significant adverse effect upon other watercourse States.

25. Article 17, paragraph 3, should provide for suspension of the planned measures until such time as an agreement establishing a deadline for

negotiations was reached; if no solution was found, recourse could be had to other methods of peaceful settlement, including court settlement, if necessary. The same considerations applied to draft article 18, paragraph 2, as to article 17, paragraph 3.

26. Her delegation believed that, in lieu of the formal declaration referred to in draft article 19, paragraph 2, it would be preferable to notify all watercourse States so that each of them could evaluate the extent to which it had been affected. Once the state of urgency had passed, the State which implemented the measures could negotiate a final solution to the problem in cooperation with other watercourse States. Furthermore, the State which implemented the measures should provide other watercourse States with compensation for any harm which might have been caused.

27. Any watercourse State, especially those which were notified, should be entitled to inspect the works being carried out in order to determine whether they were in conformity with the plans submitted.

28. With regard to part IV of the draft, the word "or" in the phrase "individually or jointly" (draft article 20 and draft article 21, para. 2) should be replaced by "and".

29. It would be useful to refer to the principle of environmental non-discrimination, in other words, that watercourse States should not make a distinction between their environment and that of other watercourse States in respect of the drafting and application of legislative and regulatory provisions concerning prevention of and compensation for pollution.

30. The draft should also provide for the liability of the State which polluted an international watercourse and should bar States from invoking immunity from jurisdiction in case of harm caused by the use of an international watercourse.

31. Lastly, her delegation noted with satisfaction the inclusion of a draft provision concerning the peaceful settlement of disputes (art. 33). That provision should be reformulated in such a way as to provide for mandatory recourse to methods of peaceful settlement leading to the solution of a dispute.

32. Mr. KOTZEV (Bulgaria) said that the final draft adopted by the Commission was a comprehensive and balanced document setting out general guidelines for the negotiation of future agreements on the utilization of international watercourses. Part II established the principle of "equitable and reasonable utilization" and the "due diligence" obligation not to cause significant harm, principles which were well grounded in State practice and in general international law. The Commission had struck the necessary balance between the two, thus guaranteeing optimal utilization by watercourse States, which was the main objective of the draft.

33. His delegation noted with satisfaction that the provisions relating to the protection, preservation and management of the ecosystems of international watercourses, contained in part IV of the draft, were in keeping with the

integrated approach to water resources management and environmental protection endorsed by the United Nations Conference on Environment and Development and reflected in Agenda 21.

34. His delegation also supported the provisions relating to fact-finding and the settlement of disputes and believed that, on the whole, the Commission had done an excellent job of codifying the existing law and fostering its progressive development.

35. At the same time, his Government believed that the draft, which went beyond the scope of a framework document, could best be realized in the form of model rules or guidelines. In addition to the necessary general principles, the draft contained provisions which could affect existing treaties or unduly restrict the discretion or flexibility of action of watercourse States.

36. In paragraph (2) of the commentary on draft article 3, the Commission expressly recognized that optimal utilization, protection and development of a specific international watercourse were best achieved through an agreement tailored to the characteristics of that watercourse and to the needs of the States concerned. His delegation firmly believed that the establishment of a legal regime regulating the non-navigational uses of an international watercourse should be left to the discretion of the States concerned.

37. At the same time, his delegation believed that widespread acceptance was a valid argument for the final form of the draft. If the idea of a framework convention met that criterion, his delegation could go along with it. Bulgaria supported the proposal that, prior to the convening of a diplomatic conference and before the General Assembly adopted the final document, a meeting of governmental experts should be held to resolve existing difficulties.

38. Mr. STRAUSS (Canada) said that his country, with more than 3,000 kilometres of international boundary waters, was particularly interested in the topic of non-navigational uses of international watercourses. While supporting the Commission's work towards regulating such uses, Canada would like to ensure the continued application of its existing bilateral arrangements in that area.

39. With a view to reconciling those two interests, he felt that wording to except existing treaties and customary rules from the application of the draft articles, such as that contained in the Helsinki Rules on the Uses of the Waters of International Rivers, should be inserted into the first article. By protecting existing treaties, such a proviso would attract more potential parties to the proposed framework agreement.

40. Canada questioned the ability of the draft articles to provide adequate environmental protection for international watercourses and wondered in particular whether the emphasis on optimal utilization did not overshadow the objective of leaving a watercourse in a pristine state. As social and economic development required a sustainable environment, Canada would prefer a better balance between utilization and protective measures. In addition to the factors relevant to equitable and reasonable utilization listed in article 6, others

must be included to promote sustainable use and provide for the protection of the watercourse, as in article 5 of the Helsinki Rules.

41. With regard to the balance between articles 5 and 7, his delegation felt that reasonable and equitable utilization of a watercourse should be subject to the obligation to ensure that any particular use was sustainable, which called for a review of those articles to reflect the principles of sustainable development. It felt that those concerns could be dealt with without affecting the integrity of the proposed regime and would like to see the articles sent to a working group for the negotiation of further changes prior to a diplomatic conference.

42. To ensure the continued applicability of existing watercourse agreements, Canada recommended adding to the draft, at the end of article 1, paragraph 1, the words:

> "except as may be provided otherwise by convention, agreement or binding custom among the watercourse States."

43. For a better balance between utilization and protective measures, it recommended adding the following factors to those enumerated in article 6:

> "(h) the need to manage the watercourse in a sustainable manner for present and future generations;
>
> (i) the need to manage the watercourse in a manner consistent with the maintenance of the ecological integrity of the watercourse ecosystem."

44. Concerning the balance between articles 5 and 7, it provisionally recommended either eliminating the second paragraph of article 7 or adding a further paragraph that read:

> "3. This article shall be interpreted in a manner consistent with the provisions of articles 20 and 21."

45. Mr. VILLAGRAN KRAMER (Guatemala) said the fact that his country shared six international watercourse systems with neighbouring countries explained why it attached such importance to the item under consideration and to the consideration of a text that could be acceptable to all delegations. While it had taken two decades to develop the draft submitted by the Commission, the text reflected the broad range of State practice in the area of the non-navigational uses of international watercourses and the experiences of various countries in formulating solutions to the problems affecting them. In that connection, his delegation noted with satisfaction the gradual acceptance by many countries of the doctrine of equitable and reasonable utilization of international watercourses.

46. The Commission had submitted a set of proposals which could be the basis of a future treaty. His delegation believed that consideration of those proposals fell within the province of the General Assembly and of the Sixth Committee.

However, if the draft remained merely a kind of declaration, that would not be a satisfactory outcome.

47. From the standpoint of terminology, it would be advisable to highlight the difference between contiguous or adjacent and successive watercourses, as each system had its own specific features; hence, a particular rule could not be assumed to be applicable to both types of watercourses.

48. Similarly, while draft article 20 referred to the ecosystems of international watercourses, the Commission did not specifically propose the use of the term "river-basin" as a basic concept. However, that concept could be useful when it came to finalizing the draft.

49. His delegation agreed with the Commission that the counterpart of the concept of equitable and reasonable use was that of due protection of international watercourses. The Commission also supported the inclusion of the principle of sustainability, which entailed the obligation to cooperate. The principle of the balance of interests, as embodied in draft article 5, was the cornerstone of any international watercourse regime, especially as applied to small countries which had larger, more powerful neighbours.

50. With regard to draft article 7 (Obligation not to cause significant harm), his delegation noted with satisfaction that the concept of due diligence, which was the core of the provision, was also embodied in the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law (A/49/10, chap. V). It was important to understand the basis for the use of that term. In paragraphs (5) and (6) of its commentary on article 14 of the draft articles on international liability, the Commission stated that due diligence was manifested in reasonable efforts by a State to inform itself of factual and legal components that related foreseeably to a contemplated procedure and to take appropriate measures in timely fashion to address them; and further, that the standard of due diligence against which the conduct of a State should be examined was that which was generally considered to be appropriate and proportional to the degree of risk of transboundary harm in the particular instance. Those concepts should be thoroughly explored.

51. Turning to article 32 (Non-discrimination) of the draft articles on the law of the non-navigational uses of international watercourses (A/49/10, chap. III), he said that its provisions appeared to be based on those contained in the International Covenant on Civil and Political Rights. Not only must non-discrimination be guaranteed, but the right of all persons to have immediate and swift access to judicial procedures in other countries, not only to the courts of their own countries, must also be ensured.

52. Mr. RIDRUEJO (Spain) said that his delegation accorded great importance to chapter III of the Commission's report. It still had doubts concerning the precise nature of the instrument: despite the language used in the commentary on article 3 of the draft, what was involved seemed closer to model rules than to a framework agreement, especially when one considered the provisions of that

article. Indeed, there was no provision clearly stating that the draft articles were applicable even in the absence of special agreements; rather, States were invited to apply the provisions of the future Convention and adapt them to the characteristics and uses of a particular watercourse. Should the draft articles become a convention, however, States would need to know what commitments they were assuming when becoming parties to it. Certain provisions, nevertheless, such as those of article 5, were binding and directly applicable, being of the nature of general customary rules.

53. He said that the term "sensible", used in the Spanish text of article 7 and related provisions to qualify the concept of harm to watercourses, was incorrect and should be replaced by the Spanish term "significativo", which would match the term used in the English and French versions.

54. The current reading of article 7 differed from the previous reading in that the obligation of watercourse States not to cause significant harm to other watercourse States, an important manifestation of the basic principle sic utere tuo ut alienum non laedas, was configured as an obligation of behaviour and not of result, being satisfied if the watercourse State exercised "due diligence". Though the juridical concept involved was vague, the introduction of the idea of due diligence deserved support, given the impossibility of establishing more precise criteria. The reference to the principle of equitable and reasonable use in the same article was also appropriate, as it implied that the obligation not to cause significant harm was subordinate to that principle.

55. It was fitting that the Commission had proposed rules pertaining to the settlement of disputes, for the question of the use of fresh water was frequently subject to particularly intense disagreements. The Commission's initiative in that regard had the advantage of fostering discussion of the topic in the Sixth Committee and would enable a conference of plenipotentiaries subsequently to base its work on concrete ideas. However, while making the establishment of a fact-finding commission compulsory represented a step forward, the optional character of recourse to conciliation constituted a step backward with respect to the conventions on codification concluded in recent decades. His delegation felt that the Commission might well have made even settlement by a tribunal compulsory for certain more technical categories of disputes. Moreover, given the extraordinary importance attributed by article 3 of the draft to "watercourse agreements", the Commission ought not to have ignored the fact that many similar agreements already in force contained more effective dispute-settlement clauses than those proposed by the draft articles. It was also fitting to ask whether the Commission should not have included in article 33 some obligation to include dispute-settlement provisions in watercourse agreements.

56. His delegation believed that the appropriate forum for the adoption of the convention was not the General Assembly but a conference of plenipotentiaries, in which not only jurists and diplomats but also technical experts would participate. Preliminary work by a group of experts would help to ensure the success of such a conference.

57. Mr. SZÉNÁSI (Hungary) said that his country, because of its geographical situation and the fact that a very high percentage of its surface water originated outside the country, had an overriding interest in a regime of equitable and reasonable utilization of international watercourses for both navigational and non-navigational purposes. It was the only European country with serious water-scarcity problems, and had been one of the first, and one of the few, delegations that resolutely supported, in 1970, Finland's initiative to put the question of the uses of international watercourses on the General Assembly's agenda.

58. His delegation felt that the draft articles, on the whole, duly took into account existing treaty law and precedent. It welcomed the incorporation of rules relating to environmental protection, which was in line with a number of recently adopted international conventions.

59. The content and interdependence of the three legal principles contained in part II of the draft, namely equitable and reasonable utilization and participation (article 5), the obligation not to cause significant harm (article 7) and the general obligation to cooperate (article 8), were the most important. His delegation disagreed with the view that the "no harm" principle was secondary to that of equal utilization; rather, the two were equally important and should be applied in close interrelation. It would like to see the current wording of article 7 strengthened along those lines. Paragraph 2, and especially subparagraph (b), should be interpreted to mean that the harm caused should be eliminated or mitigated, and compensation for it should be compulsory if circumstances so warranted. Moreover, the "no harm" principle was especially important in connection with articles 20 and 21 of the draft. That link, as well as the link between article 5 and the same two articles, had been reaffirmed by recent developments in treaty law, in particular the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Both the Convention and the Rio Declaration on Environment and Development stressed environmental protection and went so far as to rule out lack of scientific certainty as grounds for postponing action to prevent damage to the environment.

60. His delegation welcomed the inclusion of provisions on the settlement of disputes, but would have concentrated more on existing settlement procedures rather than the time-consuming procedure of establishing a fact-finding commission. It felt that the present wording of article 33 of the draft, according to which the findings of such a commission were not binding on the parties and the other procedures mentioned required the agreement of the parties to the dispute, represented a step backward, especially an area as subject to litigation as that of the allocation of natural resources.

61. He mentioned in passing that growing awareness of the importance of non-navigational uses of the Danube had led to the establishment of a preparatory committee for a conference on Danubian cooperation with a view to the elaboration and conclusion of a new legal instrument for that region to address the related aspects, which were not covered by the 1948 Belgrade Convention concerning the Regime of Navigation on the Danube.

62. In conclusion, he emphasized that his delegation considered the draft articles, on the whole, as constituting a good basis for the adoption of a convention either by the General Assembly or by a diplomatic conference.

63. Mrs. KORNFEIND (Austria) said that her country had always attached particular interest to the subject of legal regimes governing the use of international watercourses. United Nations efforts in that field had originally been guided by, inter alia, the work of the Danube Commission. Her country, which had been participating in the work of the Commission for nearly four decades, had long maintained that there was a need for an international system to regulate the non-navigational uses of water resources, with special emphasis on the factors of ecology and hydroelectric energy. Accordingly, it welcomed the adoption by the International Law Commission of the draft articles on the law of the non-navigational uses of international watercourses as an important step in that direction. Nevertheless, more work remained to be done with regard to the connection between the hydrological and hydrographic aspects of utilization.

64. Turning to the draft articles on international watercourses, she noted that the definition of a watercourse in article 2 did not include confined groundwaters, which the Commission had rightly dealt with in a separate resolution. However, future discussion should focus on the link between confined and non-confined groundwaters. It might be possible, for example, to have a convention-based legal system which dealt exclusively with surface waters and a resolution-based legal regime which dealt with all types of groundwater.

65. With regard to article 1, it was her delegation's understanding that the draft articles did apply to pollution of watercourses arising from navigational uses.

66. According to the commentary, the words "to a significant extent" in article 3, paragraph 2, had been chosen in order that the effect of the action of one watercourse State on another watercourse State could be measured by objective evidence. Yet the requirement of objective evidence was not reflected in the actual wording of article 3. A precise definition, based on objective criteria, of what was meant by the words "to a significant extent" was needed; it was particularly important because that was one of the key phrases in the draft text, including in article 7.

67. Under article 4, in order for a watercourse State to participate in consultations and negotiations relating to a proposed watercourse agreement, implementation of the agreement would have to affect "to a significant effect" the use of water by that State. The need for such a restriction was not entirely clear. In her view, any adverse affect on the use of water by a State which arose from a proposed watercourse agreement should entitle that State to participate in the negotiations.

68. Article 6, paragraph 2, stipulated that watercourse States should, when the need arose, enter into consultations in a spirit of cooperation, bearing in mind the principle of equitable and reasonable utilization of international

watercourses. However, the criteria for equitable and reasonable utilization, enumerated in article 6, paragraph 1, mainly concerned the so-called horizontal conflicts of utilization where the parties involved were using the watercourse for similar purposes. There were no provisions for disputes between parties using a watercourse for different purposes, although an attempt had been made in article 10, paragraph 2, to offer a procedural solution. It might, therefore, be advisable to provide substantive guidelines to supplement the procedural solution and make the outcome of the dispute more predictable.

69. Under article 7, watercourse States were bound to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States. Her delegation took the view that the obligation set forth in article 7 did not prejudice questions of liability. It also welcomed the fact that paragraph 2 (b) of that article mentioned the possibility of compensation for harm caused in spite of the exercise of due diligence.

70. Ensuring respect for the principle of the common responsibility of all watercourse States was the fundamental aim of the draft articles. In that connection, article 9 should be elaborated further. Her delegation welcomed the consultation mechanism elaborated in article 12 and following. However, it wondered whether those procedures met the criteria for a fair trial and whether they might lead to delays which could have adverse effects, including infringement of civil rights.

71. In view of increasing threats to the marine ecosystem and its related food resources, the international community urgently needed to protect the marine environment, in particular from land-based pollution which accounted for a major part of marine pollution. Article 192 of the United Nations Convention on the Law of the Sea stipulated that States had the obligation to protect and preserve the marine environment. Article 23 of the draft articles on international watercourses dealt with the obligation of watercourse States not to pollute the marine environment. However, that obligation applied only to States in whose territory part of an international watercourse was situated and did not apply to States through whose territory watercourses ran on their way to the sea. Thus, the latter States might turn out to gain an unfair advantage from regulations relating to land-based pollution. For that reason, article 23 should be eliminated entirely.

72. Her delegation welcomed the provisions on settlement of disputes (article 33). The mechanism for initiating the settlement process was satisfactory. Nevertheless, the dispute settlement procedure would be even more effective if States were encouraged to submit their disputes to binding arbitration. Such an approach would also have a preventive effect: States would be more willing to conform to legal requirements if they were aware that other States could resort to binding third party settlement procedures.

73. Her delegation was convinced that the draft articles provided a solid basis on which to elaborate a convention.

74. Mr. ZHU Wen-qi (China) said that the current draft articles on the law of the non-navigational uses of international watercourses had incorporated States' views on a number of important matters. In article 2 (Use of terms), the definition of a watercourse had successfully combined two differing views - that in favour of retaining the words "flowing into a common terminus" and that in favour of eliminating those words - by using "normally flowing into a common terminus". The new wording provided a scientifically accurate definition of a water system and a better definition of the geographic scope of a watercourse.

75. His delegation endorsed the replacement in the draft articles of the words "appreciable harm" with "significant harm", which was clearer and more straightforward. Moreover, that usage was in line with other international instruments dealing with environmental protection and would be more acceptable to States. The new wording did not, however, preclude the possibility that States would apply more rigorous standards in practice.

76. The draft articles had established a balanced relationship of rights and obligations for those States notifying others about the possible effects on watercourses of measures they might take and for those States being notified about such measures.

77. With regard to the settlement of disputes, his delegation endorsed the provisions which required States to settle disputes initially through consultations and negotiations (article 33) and which, where such efforts failed, provided States with recourse to various legal procedures. However, in view of the vast range of available dispute settlement procedures, the draft articles should give States adequate latitude to seek such procedures.

78. The draft articles provided explicit rules under which watercourse States were entitled to enter into bilateral or multilateral agreements, tailored to their specific needs, provided that they respected the general principles set forth in the articles. The flexible approach of the draft articles would guarantee that international watercourses were developed and used to the fullest. It would also have the advantage of leaving room for the bilateral or multilateral agreements already concluded or near completion. States could, of course, if they so desired, modify existing agreements in accordance with the general principles set forth in the draft articles.

79. His Government appreciated the Commission's prudent and objective decision to limit the scope of the draft articles to the non-navigational uses of international watercourses. In its resolution on the matter, the Commission had recommended that States should consider applying the principles contained in the draft articles to confined transboundary groundwater. That recommendation reflected an emerging trend towards comprehensive management of global water resources and integrated protection of the environment. Furthermore, in view of the need to gather further scientific information on confined groundwater, it was altogether appropriate for the Commission to have adopted a flexible recommendation on that subject, which could be used for the elaboration of a future agreement.

80. On the whole, the draft articles reflected the principle of equitable and reasonable utilization of international watercourses. While still needing some improvement, the articles could certainly serve as the basis for negotiations or for the elaboration of a convention.

81. Mr. SAMODRA SRIWIDJAJA (Indonesia) said the Commission had taken a major step by adopting the draft statute for an international criminal court. In that connection, his delegation had noted with interest the Commission's general comments in paragraphs 45 to 76 of its report. He favoured a cautious, step-by-step approach to future work on the draft statute, because the draft had to take into account current international realities and strike a balance between national jurisdictions and international cooperation. Various political aspects were also involved and, accordingly, a decision on the general approach to the statute should be left entirely to States. Generally speaking, a practical approach was the most appropriate.

82. In his view, the court should not be a costly full-time body but rather an established structure which would be called into operation as required. The court should also be regarded as a means of supplementing rather than superseding national jurisdictions.

83. The most feasible procedure for establishing the court would be by elaborating a multilateral convention under the auspices of the United Nations or by convening an international conference of plenipotentiaries. The latter approach would ensure that States accepted the draft statute before it entered into force. Under a convention, a State would be able to choose freely whether or not it accepted the jurisdiction of the court.

84. It was generally agreed that the court should be closely associated with the United Nations in order to guarantee its international character and moral authority.

85. For its initial work, the court should draw upon well-established principles of criminal law as adopted by States; however, that matter merited further consideration. The questions of applicable law and jurisdiction ratione materiae could best be resolved by completing the draft Code of Crimes against the Peace and Security of Mankind.

86. Consent of States should be the basis for the exercise of jurisdiction by the court. No State should be bound without its consent, including the State or States of which the accused was a national and the State or States in which the alleged crime had been committed. In view of the complex nature of the provisions relating to jurisdiction ratione materiae, it would be preferable to limit the corresponding list to international crimes of concern to all States. The final list of treaties to be considered should be decided by States at some future time.

87. Under article 23 of the draft statute, the Security Council was entitled to refer matters to the court. However, because of the use of the veto, the Council was not always able to exercise its authority. It would, therefore, be

advisable to vest the power of referring cases to the court in the General Assembly, which was the most representative body of the United Nations.

88. His delegation agreed that in selecting judges, account should be taken of the principle of equitable geographical representation and efforts should be made to represent the different legal systems in the world.

89. Turning to the draft articles on the law of the non-navigational uses of international watercourses, he noted that the adoption of the final draft of the articles and of a resolution on confined groundwater had brought closer the conclusion of a framework convention on the entire subject. The draft articles laid out a framework agreement for watercourse States which contained general legal principles regulating the use of watercourses in the absence of specific agreements and providing guidelines for negotiating future agreements. At the same time, States were entitled to adjust the articles to the characteristics and uses of particular national watercourses (art. 3, para. 3).

90. The draft articles required States to apply the principle of equitable utilization in their use of international watercourses. That principle had been considered in 1973 by the standing subcommittee on international rivers of the Asian-African Legal Consultative Committee, which had elaborated a set of proposals providing, inter alia, that each basin State was entitled to a reasonable and equitable share in the beneficial uses of the waters concerned and that what was reasonable and equitable would be determined by considering all relevant factors in each particular case.

91. The draft text emphasized the general obligation of watercourse States to cooperate with one another. It set forth obligations for the protection and preservation of the ecosystems of international watercourses, which corresponded to article 192 of the United Nations Convention on the Law of the Sea. Under the draft articles, watercourse States had to take steps to harmonize their policies on the prevention and reduction of water pollution, which was consistent with the Law of the Sea Convention and with treaty practice. Under article 22, watercourse States had to take all measures necessary to prevent the introduction of species which might cause significant harm to other watercourse States, and under article 23, States were required to address the problem of pollution transported by watercourses into the marine environment. That obligation was recognized in the Law of the Sea Convention and in conventions concerning regional waters.

92. Cooperation among watercourse States would ensure their own protection and would maximize benefits for all the watercourse States concerned. In that connection, article 24 was intended to facilitate consultations between States on the management of international watercourses, including the establishment of a joint organization or other mechanisms. He noted also in that connection that multilateral and bilateral commissions for managing international watercourses were increasing in the developing countries.

93. His delegation had noted with particular interest article 33 (b), under which the parties to a dispute could have recourse to fact-finding, mediation or

conciliation procedures before submitting the dispute to arbitration or judicial settlement.

94. His delegation was pleased to note the successful holding in Geneva of the thirtieth session of the International Law Seminar in which advanced law students, beginning law professors and government officials had participated.

The meeting rose at 1.05 p.m.